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No. 99-

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IN THE

Supreme Court of the United States

MAPLE LANES, INC. d/b/a FRANKIES and
KENNETH J. GEORGE, SR.,

Petitioners,

v.

MEL MESSER, individually and in his official capacity as
SHERIFF OF OGLE COUNTY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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32 pp

QUESTIONS PRESENTED

I. Whether the Rooker-Feldman Doctrine deprives a Federal District Court of subject-matter jurisdiction over a defamation action brought under 42 U.S.C. § 1983, alleging loss of a property interest in a business that sold alcoholic beverages when the businesses license had been the subject of prior administrative action which was ultimately resolved by an agreement between the parties.

II. Whether a cause of action is set forth under the stigma-plus defamation analysis established in *Paul v. Davis,* 424 U.S. 69, 424 U.S. 693 (1975), is satisfied when the deprivation complained of is the proximate cause of the defamation complained of, despite being the result of action taken by a second actor.

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Petitioners, Maple Lanes Incorporated, doing business as Frankies, and Kenneth George Sr. respectfully request that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at *Maple Lanes, Inc. v. Messer*, 186 F.3d 823 (7th Cir. 1999) and is reproduced in the appendix (B). The opinion of the District Court in *Maple Lanes, Inc. v. Messer*, 98 S. Ct. 50138 is unreported and is reproduced in the Appendix (C).

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Seventh Circuit entered judgment in this matter on July 27, 1999. (Appendix B) The Court of Appeals denied a timely petition for rehearing en banc on August 18, 1999. (Appendix D).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "No State shall . . . deprive any person of life, liberty or property without due process of law. . . ."

42 U.S.C. § 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

235 Illinois Compiled Statutes 5/7-11 provides:

> Judicial review. All final administrative decisions of the State Commission under this Act shall be subject to judicial review pursuant to the provisions of the Administrative Review Law and the rules adopted pursuant thereto. Judicial review may be requested by any party in interest, including but not limited to the local liquor control commissioner. The term "administrative decision" is defined in Section 3-101 of the Code of Civil Procedure.

STATEMENT OF THE CASE

This petition raises two issues. The first question is whether proceedings in a state administrative agency which are resolved by agreement of the parties deprives the federal courts of subject-matter jurisdiction under the Rooker-Feldman doctrine because the federal action would constitute impermissible review of the state administrative agency

action. The second question, which goes to the heart of the Plaintiffs' cause of action, is whether the resulting loss of business, including the suspension of a liquor license, resulting from a defamatory statement made by a county sheriff is a sufficient deprivation of a property interest to state a cause of action under 42 U.S.C. § 1983. The District Court for the Northern District of Illinois, Western Division dismissed this case because the Plaintiff's loss of the liquor license was accomplished through administrative action by the city of Rochelle, Illinois rather than by the Defendant directly. The District Court had jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1331. The United States Court of Appeals for the Seventh Circuit (having jurisdiction pursuant to 28 U.S.C. § 1291 and 28 U.S.C. § 1295) did not reach the merits of this argument and instead raised the issue of subject-mater jurisdiction sua sponte and ordered this case dismissed under the Rooker-Feldman doctrine.

In early May of 1996, Mel Messer, the sheriff of Ogle County, made the following statement to the Rochelle News-Leader: "We are targeting businesses that supplement their income with cocaine and drug sales like we did with Frankie's in Rochelle." Maple Lanes, Inc. d/b/a Frankies (Maple Lanes) never supplemented its income through drug sales. The Rochelle News-Leader published this statement on May 9, 1996. One result of the publication of this statement was that, on or about June 1, 1996, the City of Rochelle revoked Maple Lanes', liquor license. The revocation was upheld by the Illinois Liquor Commission. Maple Lanes contested the revocation in state court and the matter was resolved by agreement.[1] The agreement reinstated

1. The record is devoid of any mention of the administrative proceedings and the agreement that resolved this matter because, (Cont'd)

Maple Lanes license effective on the sale of the business. Maple Lanes was sold on July 25, 1997 and reopened in August of 1997. The ultimate effect of Sheriff Messer's defamatory statement was the complete destruction of the Plaintiffs' ability to do business, which included the loss of the liquor license.

REASONS FOR GRANTING THE WRIT

I.

THIS PETITION SHOULD BE GRANTED BECAUSE IMPORTANT QUESTIONS REGARDING THE POWER OF THE FEDERAL COURTS ARE INVOLVED WHICH REQUIRE CLARIFICATION BY THIS COURT.

The petition for writ of certiorari should be granted because the Seventh Circuit's dismissal of this action raises serious questions about the subject-matter jurisdiction of the federal courts. In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), this Court set forth the proposition that only the Federal District Courts lack the power to sit as courts of review over the courts of the states. *Id.* at 416. Only the

(Cont'd)
until the Seventh Circuit raised the issue of subject-matter jurisdiction sua sponte at oral argument, these proceedings were not relevant to anything at issue in the case. At oral argument, the Seventh Circuit questioned Petitioners' counsel about these proceedings. Petitioners' counsel answered to the best of his ability and stated incorrectly that he believed the license had not yet been reinstated, but as neither party had considered these proceedings relevant, was unable to provide much information. Petitioner had different counsel during these proceedings. The Seventh Circuit based its dismissal on this information.

Supreme Court may exercise such power. *Id.* This is true even though a question of federal constitutional law is involved. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483 (1983). If a constitutional claim is inextricably intertwined with a state court judgment, the federal courts lack subject matter jurisdiction over the claim. *Id.* at 483 n.16. The Seventh Circuit's decision in the present case represents an unwarranted extension of the Rooker-Feldman doctrine. *See Maple Lanes, Inc. v. Messer*, 186 F.3d 823 (7th Cir. 1999) (Appendix B). This extension limits the power of the federal courts in a manner inconsistent with the principles announced in these two cases. *Cf. Penzoil Co. v Texaco Inc.*, 481 U.S. 1, 18 (1987) (Scalia, J., concurring) (finding Rooker-Feldman no bar when plaintiff sought injunction against enforcement of a state court judgment by attacking the constitutionality of the state law enforcement provisions). As such, the Seventh Circuit's decision conflicts with the decision of this Court and clarification is needed to determine the scope of the jurisdiction of the Federal District Courts. Three aspects of the lower courts decision suggest that Rooker-Feldman was inappropriately applied here. First, the doctrine was applied following a settlement between the parties rather than following a state court judgment. Second, the parties involved in the settlement were not the parties involved in the action before the District Court. Finally, the subject matter of the earlier proceeding was limited to the revocation of Maple Lanes' liquor license while the action in the District Court involved a deprivation that was considerably broader. These problems will be addressed sequentially.

The dispute between Maple Lanes and the City of Rochelle regarding the revocation of the Plaintiffs' liquor license was disposed of through an agreement restoring the

license contingent upon Plaintiffs' sale of the business. At the time settlement occurred, Plaintiffs were challenging the revocation in Illinois state court. The revocation had been approved by the Illinois Liquor Commission previously. The Seventh Circuit correctly noted that "[i]f a licensee is unsuccessful in his pursuit of review of the revocation of the license according to the procedures set forth in the [Liquor Control] Act, the revocation of the license results in a final state court judgment against the licensee." *Maple Lanes*, 186 F.3d at 825. In the present case, the matter was disposed of by agreement after the initial administrative hearing but before Maple Lanes exercised its right to judicial review. *See* 235 Ill. Comp. Stat. 5/7-11. Since the matter was settled while mandatory review of the administrative decision was pending, there was no judgment of final judgment of a state judicial body to review in this case. As these proceedings were resolved by settlement, there is no state judgment for a District Court to review, hence the Rooker-Feldman doctrine is inapplicable.

Second, and more importantly, the earlier administrative action involved parties not involved in the present action. In the earlier actions the contestants were Maple Lanes and the City of Rochelle. Presently, the parties are Maple Lanes and Ogle County Sheriff Mel Messer. This Court has recognized that Rooker-Feldman is no bar when a party not involved in a previous state court proceeding seeks redress in the Federal Courts. *Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994). In *Johnson*, the United States filed an action which was consolidated with a suit brought by private plaintiffs, the subject matter of which had been previously litigated in the Florida courts. *Id.* at 1002. This court held that Rooker-Feldman did not bar the Untied States' participation because they had not been a party to the state court action.

Id. at 1006. Since it was not a party, this Court reasoned, it was "in no position to ask this Court to review the state court's judgment and has not directly attacked it in this proceeding." *Id.* The same reasoning applies to the present case, even though in this case it is the Defendant who was not a party to the prior proceeding. Any state court judgment in these circumstances would not have been directed to the Defendant. Maple Lanes is asserting a cause of action against Mel Messer for the first time in the District Court. A finding of liability in the District Court against Mel Messer would not constitute review of the prior proceedings simply because those proceedings did not involve the claim asserted here. Had the Maple Lanes prevailed in the state action instead of settling the matter, Maple Lanes would still have a cause of action against the Defendant because the Defendant's actions resulted in damages beyond those that were the subject of the liquor license revocation proceedings and settlement.

Finally, Rooker-Feldman does not deprive the District Court of subject-matter jurisdiction because the deprivation complained of in the present case is much broader than the mere loss of a liquor license. The Seventh Circuit erroneously conclude that an award of damages for the deprivation worked by the Defendant would be the functional equivalent of an action to reinstate Maple Lanes's liquor license. *Maple Lanes*, 186 F.3d at 825. The lower court reasoned that relief in the form of monetary damages equal to the value of the liquor license would effectively reverse the state court judgment upholding the revocation of the liquor license. *Id.* at 826. This reasoning ignores the fact that the deprivation complained of in the action under 42 U.S.C. § 1983 is much broader than the mere loss of the license. The right to pursue a trade, business or profession constitutes a property interest under Illinois law. *Coldwell Banker Residential Real Estate*

Service of Illinois v. Clayton, 105 Ill.2d 389, 397, 475 N.E.2d 536, 540 (Ill. 1985) (A liquor license is also a property interest under Illinois law. *See Katris v City of Waukegan*, 498 F. Supp. 48, 53 (N.D. Ill. 1980)). The loss of the ability to conduct business at Maple Lanes exceeded the ability to sell liquor there. Having the reputation of being a place where drugs are, or were, sold adversely impacts upon all business that could have been conducted out of that establishment. The incongruity between the damages in the two actions is further demonstrated by the fact that even if Maple Lanes' liquor license had not been revoked or if it had been reinstated, the defamatory statement still would have had a tremendous adverse impact upon Mr. George's business. People in a small mid-western town will not patronize an establishment with such a reputation. These damages are far broader than the loss of the liquor license, hence, imposing liability upon Mel Messer would not constitute a reversal of any state court judgment regarding the license (particularly in this case, where the earlier proceeding ended in a settlement).

In *Feldman*, the Plaintiffs had received a state proceeding "which fully encompassed the constitutional and statutory issues involved." *Feldman*, 460 U.S. at 470. In the present case, Maple Lanes received no such hearing. Mel Messer was not a party, and the damages complained of were of a different order. The earlier matter ended in settlement so no state court judgment is involved. The Rooker-Feldman doctrine is therefore not applicable in this case. This Court should grant this petition in order to delineate the contours of the Rooker-Feldman doctrine and define the limits of the authority of the federal courts in these matters.

II.

THIS PETITION SHOULD ALSO BE GRANTED BECAUSE IT WOULD GIVE THIS COURT AN OPPORTUNITY TO RESOLVE WHETHER A DEPRIVATION PROXIMATELY CAUSED BY THE DEFENDANT BUT WORKED BY A SECOND ACTOR CONSTITUTES THE DEPRIVATION OF A PROPERTY INTEREST SUFFICIENT TO STATE A CAUSE OF ACTION FOR DEFAMATION UNDER THE STIGMA PLUS ANALYSIS, A MATTER WHICH HAS RECEIVED INCONSISTENT TREATMENT BY THE COURTS OF APPEALS.

Granting this petition would allow this Court to clarify the requirements of the stigma-plus analysis for maintaining an action under 42 U.S.C. § 1983 for defamation by a state actor. In the present case, the defamatory statement complained of was published by Sheriff Messer while the resulting deprivation was worked in two ways. First, the defamation caused a separate actor, namely the City of Rochelle, to revoke the Petitioners' liquor license. Second, the statement complained of prevented the Petitioner from maintaining a previously established business in the city. Both constitute property interests under Illinois law. *See Coldwell Banker*, 105 Ill.2d at 397, 475 N.E.2d at 540; *Katris*, 498 F. Supp. at 53. The District Court, focusing on the first of these deprivations, dismissed this case because the City, rather than the Sheriff, actually revoked Maple Lane's license. (Appendix C). The question to be resolved here is whether deprivations of protected interests that are proximately caused by a state actor, although effectuated by a different actor, are sufficient to satisfy the requirement that a plaintiff must allege damages beyond mere stigma to one's

reputation to maintain such an action under 42 U.S.C. § 1983. *See Paul v. Davis*, 424 U.S. 693, 708-709 (1976). If a constitutional violation can be attributed to a state actor through the principles of proximate causation, that actor should be liable for the resulting deprivation regardless of the particular manner in which the deprivation was worked. Under Illinois law, proximate cause means that natural and probable consequences, including intervening causes that the wrongdoer should have reasonably anticipated, flowing from the wrongdoer's actions. *Hylin v. United States*, 715 F.2d 1206, 1216 (7th Cir. 1983).

Varying interpretations by the Circuit Courts creates confusion in this area. The District Court relied on *Margoles v. Tormey*, 643 F.3d 1292 (7th Cir. 1981), in dismissing this case. (Appendix C). In *Margoles*, the Seventh Circuit held that the denial of a medical license by an Illinois agency was not sufficient to satisfy the stigma-plus requirements against Wisconsin officials who provided false information to the Illinois agency. *Id.* at 1297; *see also Fleury v. Clayton*, 847 F.3d 1299, 1231 (7th Cir. 1988). Thus in the Seventh Circuit, as the District Court found, if the actual deprivation is worked by a second party, the deprivation does not satisfy the stigma-plus requirements. The Eighth Circuit seems to disagree. *See American Family Life Assurance Co. v. Teasdale*, 733 F.2d 559, 565 (8th Cir. 1984). Conversely, in *San Jacinto Savings & Loan v. Kacal*, 928 F.2d 697 (5th Cir. 1991), the Fifth Circuit gave the stigma-plus analysis a much broader reading.

> This circuit has consistently applied *Paul* by requiring that a section 1983 claimant show a stigma *plus* an infringement of some other interest. *See, e.g., Connelly v. Comptroller of the*

> *Currency*, 876 F.2d 1209, 1215 (5th Cir. 1989); *Geter v. Fortenberry*, 849 F.2d 1550, 1557 (5th Cir. 1988); *Vandygriff*, 711 F.2d at 1221. To fulfill the stigma aspect of the equation, a claimant must "prove that the stigma was caused by a false communication." *Codd v. Velger*, 429 U.S. 624, 97 S. Ct. 882, 51 L. Ed. 2d 92 (1977). This Court has found sufficient "stigma" only in concrete, false factual representations or assertions, by a state actor, of wrongdoing on the part of claimant. *See Connelly*, 876 F.2d at 1215. To establish the "infringement" portion of the "stigma plus infringement" test, a claimant must establish that the state sought to remove or significantly alter a life, liberty, or property interest recognized and protected by state law or guaranteed by one of the provisions of the Bill of Rights that has been "incorporated."

The *San Jacinto* court accepted a decline in patronage, directly caused by police action, as a deprivation capable of satisfying the stigma-plus analysis. *San Jacinto*, 928 F.2d at 703. The contention that the decline in business was caused by the "free choice of private citizens" was expressly rejected due to its direct causal relationship to the police action complained of. *Id.* The present case raises a similar question, given the causal relationship between Sheriff Messer's statement and the resulting action by the City of Rochelle; however this question can not be addressed under the Seventh Circuit's interpretation of the stigma-plus analysis.

The nature of this particular cause of action is more amenable to a proximate cause analysis than the test adhered to by the Seventh Circuit. Defamation will rarely, if ever, be

the sole cause of the deprivation complained of in any given case. The mere speaking of the words damages only reputation, which is not a constitutionally protected interest. *Paul v. Davis*, 424 U.S. at 709. Nevertheless, the defamation may have foreseeable consequences upon a protected interest. If the statements are of the right character, they may destroy a plaintiff's business or foreseeably cause another agency to take adverse action. If the deprivation complained of is worked by the actual defamer, it becomes unnecessary to refer to the defamation at all and the deprivation may be attacked directly as a denial of due process. *See San Jacinto*, 928 F.2d at 704. The ultimate result of requiring the same actor to be both the defamer and the sole cause of the constitutional deprivation is to eliminate defamation as a cause of action under 42 U.S.C. § 1983. Such a result would be unfortunate because, as in the present case, defamatory statements may have foreseeable results which deny citizens due process of the law. Granting this petition for certiorari would allow this Court to address this important question of federal law.

CONCLUSION

This case presents this Court with the opportunity to address two important questions of federal law. First, it allows the Court to address the jurisdictional limits of the power of the federal courts as delineated by the Rooker-Feldman doctrine. Second, the Court can resolve whether deprivations proximately caused by a state actor are sufficient to state a cause of action under 42 U.S.C. § 1983. For the foregoing reasons, the Petitioners respectfully request that this petition for certiorari be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — AMENDED JUDGMENT AND MINUTE ORDER FORM OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, WESTERN DIVISION DATED SEPTEMBER 10, 1999

UNITED STATES DISTRICT COURT
Northern District Of Illinois
Western Division

Case Number: 98 C 50138

Maple Lanes, Inc., et al.

v.

Mel Messer, et al.

AMENDED JUDGMENT IN A CIVIL CASE

* * *

■ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that pursuant to the order of the Seventh Circuit, on remand this case is dismissed for lack of jurisdiction.

Michael W. Dobbins, Clerk of Court

_____

Susan Wessman, Deputy Clerk

Date: 9/10/1999

Appendix A

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge:
Philip G. Reinhard

Case Number:
98 C 50138

Date:
9/10/1999

Case Title:
Maple Lanes, Inc., et al. vs. Mel Messer, et al.

Docket Entry:

* * *

(10) ■ [Other docket entry] Pursuant to the order of the Seventh Circuit, on remand this case is dismissed for lack of jurisdiction.

* * *

✓ Notices mailed by judge's staff.

✓ Mail AO 450 form.

✓ Copy to judge/magistrate judge.

SW courtroom deputy's initials

2 number of notices

9/10/1999 date mailed notice

SW mailing deputy initials

APPENDIX B — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DATED AND DECIDED JULY 27, 1999

In the

United States Court of Appeals

For the Seventh Circuit

No. 98-4158

MAPLE LANES, INC., d/b/a FRANKIE'S and KENNETH J. GEORGE, SR.,

Plaintiffs-Appellants,

v.

MEL MESSER, individually and in his official capacity as SHERIFF OF OGLE COUNTY and OGLE COUNTY SHERIFF'S DEPARTMENT,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Western Division.
No. 98-C-50138—**Philip G. Reinhard**, *Judge*.

ARGUED APRIL 19, 1999—DECIDED JULY 27, 1999

Before POSNER, *Chief Judge*, COFFEY and KANNE, *Circuit Judges*.

KANNE, *Circuit Judge*. On May 9, 1996, Mel Messer, Sheriff of Ogle County, Illinois, issued the following statement to the *Rochelle News-Leader*, a local newspaper: "We are targeting businesses that supplement their income with cocaine and drug sales, just like we did with Frankie's in Rochelle." The newspaper published this statement, and shortly thereafter the city of Rochelle revoked the liquor license held by Maple Lanes, Inc., d/b/a Frankie's. In response, Maple Lanes and Kenneth George,

Sr., its president and principal shareholder (collectively referred to as "Maple Lanes"), filed suit against Messer, individually and in his official capacity as Sheriff of Ogle County, and the Ogle County Sheriff's Department, claiming that Messer violated their civil rights under 42 U.S.C. § 1983. According to the complaint, the alleged false and defamatory statement resulted in the revocation of Maple Lanes's liquor license and caused a loss of property and economic interest without due process of law and a host of other injuries to George.

The district court granted defendants' motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The court first noted that the Ogle County Sheriff's Department was an improper party based on the fact that no such governmental entity existed. The court dismissed the remaining claims against Messer because the city of Rochelle, and not Messer, actually deprived Maple Lanes of its alleged property interest, the liquor license. In essence, the district court determined that the defamatory statement made by Messer was separate and distinct from the revocation of Maple Lanes's liquor license, as it was the city and not the sheriff that revoked the license. Maple Lanes appeals only the district court's determination with respect to the claims against Messer.

We review a district court's grant of a motion pursuant to Rule 12(b)(6) *de novo*, accepting all of the well-pleaded allegations in the complaint as true and drawing all reasonable inferences in favor of the plaintiff. *See Hi-Lite Prods. Co. v. American Home Prods. Corp.*, 11 F.3d 1402, 1405 (7th Cir. 1993). Such a motion challenges the sufficiency of the complaint for failure to state a claim upon which relief may be granted. Fed.R.Civ.P. 12(b)(6). "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

Within the state of Illinois, the Liquor Control Act of 1934 governs the revocation of liquor licenses and admin-

istrative and judicial review of such revocations. *See* Ill. Comp. Stat. § 5/1-1 *et seq*. According to the Act, the local liquor commissioner may revoke any license issued by him if he determines that the licensee has violated any of the provisions of the Act, any valid ordinance or resolution enacted by the local government, or any rule or regulation established by the local or state liquor commission. *See* 235 Ill. Comp. Stat. § 5/7-5. A liquor license may only be revoked after a public hearing and pursuant to a written order by the local commissioner. *Id.* The Act provides for administrative review of any revocation to the Illinois Liquor Control Commission, *see* 235 Ill. Comp. Stat. § 5/7-9, and for judicial review pursuant to the provisions of the Illinois Administrative Review Law, *see* 235 Ill. Comp. Stat. § 5/7-11. If a licensee is unsuccessful in his pursuit of review of the revocation of the license according to the procedures set forth in the Act, the revocation of the liquor license results in a final state court judgment against the licensee.

During oral argument and in response to a question posed by this Court, counsel for Maple Lanes represented that Maple Lanes pursued state court review of the revocation of its liquor license to an unsuccessful end. In the case before us, it is apparent that Maple Lanes seeks to attack collaterally the revocation of its liquor license by asserting a defamation case against Messer. The statement Messer made to the *Rochelle News-Leader* set in motion a proceeding that led to the valid revocation of Maple Lanes's liquor license. Maple Lanes was unsuccessful in its efforts to get the license restored through state court proceedings and now seeks the monetary value of this license as damages in its defamation suit by attempting to mount an end-run around the adverse outcome in state court.

The *Rooker-Feldman* doctrine prohibits federal courts from exercising subject matter jurisdiction over claims seeking review of state court judgments. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-

86 (1983). In assessing the applicability of the *Rooker-Feldman* doctrine, "the fundamental and appropriate question to ask is whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment." *Garry v. Geils*, 82 F.3d 1362, 1365 (7th Cir. 1996). The injury of which Maple Lanes complains—the loss of the liquor license—stems directly from the state court judgment upholding the revocation of the license. Maple Lanes's effort to portray this injury as a federal civil rights violation is insufficient to overcome the *Rooker-Feldman* doctrine. A plaintiff may not circumvent the effect of the *Rooker-Feldman* doctrine simply by casting his complaint in the form of a federal civil rights action. *See Ritter v. Ross*, 992 F.2d 750, 754 (7th Cir. 1993). In essence, Maple Lanes seeks to undo the effect of the revocation of its liquor license by collecting an amount of damages from Messer for the alleged violation of its constitutional rights equal to the monetary value of the license. The *Rooker-Feldman* doctrine does not permit this result.

If a federal court were to award the relief Maple Lanes seeks in the form of monetary damages equal to the value of the liquor license, this result would effectively reverse the state court judgment upholding the revocation of the liquor license. There is little difference between awarding Maple Lanes the monetary value of the license and the license itself. Because the district court lacked subject matter jurisdiction in this case, we VACATE the order dismissing the complaint for failure to state a claim and REMAND with instructions to dismiss for lack of jurisdiction.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX C — JUDGMENT, MINUTE ORDER FORM AND MINUTE ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION DATED NOVEMBER 9, 1998

UNITED STATES DISTRICT COURT
Northern District Of Illinois
Eastern Division

Case Number: 98 C 50138

Maple Lanes, Inc., et al.

v.

Mel Messer, et al.

JUDGMENT IN A CIVIL CASE

* * *

■ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that defendants Rule 12(b)(6) motion to dismiss is granted and plaintiffs' complaint is dismissed in its entirety with prejudice.

Michael W. Dobbins, Clerk of Court

s/ Susan Wessman
Susan Wessman, Deputy Clerk

Date: 11/9/1998

Appendix C

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge:
Philip G. Reinhard

Case Number:
98 C 50138

Date:
11/9/1998

Case Title: –
Maple Lanes Inc., d/b/a Frankies' vs. Messer, et al.

Docket Entry:

* * *

(10) ■ [Other docket entry] For the reasons stated on the reverse, defendants' Rule 12(b)(6) motion to dismiss is granted and plaintiffs' complaint is dismissed in its entirety with prejudice.

(11) ■ [For further detail see order on the reverse side of the original minute order.]

s/ Philip G. Reinhard

* * *

SW6 courtroom deputy's initials

* * *

Appendix C

ORDER

Plaintiffs have brought a two-count complaint against defendant Mel Messer, individually and in his official capacity as Sheriff of Ogle County, and against defendant Ogle County Sheriff's Department, pursuant to 42 U.S.C. § 1983. Plaintiffs allege Messer gave the following false statement to a local newspaper: "We are targeting businesses that supplement their income with cocaine and drugs sales. just like we did with Frankies in Rochelle." (Compl. ¶ 7) Plaintiffs allege this published defamatory statement resulted in lost revenue and caused the City of Rochelle to revoke the liquor license of Maple Lanes Inc. d/b/a Frankies ("Frankies"), resulting in a deprivation of property and economic interest without due process of law. (*Id.* ¶ 14) Defendants have moved to dismiss the complaint pursuant to Fed.R.Civ.P. 12(b)(6), arguing *inter alia*, that plaintiffs' complaint fails to allege defendants deprived them of a constitutionally protected property or liberty interest. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and venue is proper as the alleged events occurred in this district and division.

At the outset, the court notes that the Ogle County Sheriff's Department is an improper party because there is no such governmental entity. In addition, the court finds that plaintiffs have failed to allege a cognizable claim under §1983. The initial inquiry in §1983 suits is whether the conduct complained of deprived plaintiffs of a right, privilege or immunity protected by the Constitution or laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981). Defamation by a state actor, without more, does not constitute

a deprivation of a property or liberty interest under the Fourteenth Amendment. *Paul v. Davis*, 424 U.S. 693, 712 (1976). To rise to the level of a constitutional injury, the defamation must involve stigmatizing information and be accompanied by a deprivation or significant alteration of a government right or benefit, or a change in plaintiffs' status. *Hadley v. County of DuPage*, 715 F.2d 1238, 1246-47 (7th Cir. 1983), *cert. denied*, 465 U.S. 1006 (1984).

Plaintiffs argue Frankies' liquor license is a governmental right, the deprivation of which without notice or a hearing violated the due process clause. However, even assuming the liquor license is a liberty or property interest within the meaning of the Fourteenth Amendment, *Cf. Wisconsin v. Constantineau*, 400 U.S. 433 (1971), the Sheriff did not revoke the license. Rather, the City of Rochelle did. (Compl. ¶ 13) Plaintiffs allege the Sheriff's defamatory statements caused the City to revoke the license, and they argue this is sufficient to impose liability against the Sheriff. However, the Seventh Circuit disagrees. *Margolis v. Tormey*, 643 F.2d 1292, 1299 (7th Cir.) (Wisconsin medical board not liable for Illinois medical board's denial of plaintiff's medical license, even though denial was based on alleged defamatory statements made by Wisconsin board; Illinois board's denial separate and distinct decision), *cert. denied*, 452 U.S. 939 (1981); *see also Fleury v. Clayton*, 847 F.2d 1229, 1231 (7th Cir. 1988) (if discipline in Illinois led to unpleasant consequences in other states, plaintiff must protest consequences in those states); *Albamonte v. Bickley*, 573 F. Supp. 77, 82 (N.D. Ill. 1983); *Larson v. Mulcrone*, 575 F. Supp. 1, 2-3 (N.D. Ill. 1982), *aff'd*, 723 F.2d 914 (1983). As the Ninth Circuit reasoned in *Cooper v. Dupnik*,

924 F.2d 1520, 1534 (9th Cir. 1991), *rev'd on other grounds*, 963 F.2d 1220 (9th Cir.) (en banc), *cert. denied*, 506 U.S. 953 (1992) (cited by plaintiffs), if a plaintiff had only to show that the state defamed him and not that the state did something else as well, the effect would be to transmute all defamation actions against state actors into §1983 actions, clearly contrary to the *Paul* Court's holding. The court need not consider defendants' remaining arguments, and plaintiffs' complaint is dismissed in its entirety with prejudice.

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DATED AUGUST 18, 1999

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

August 18, 1999

Before

Hon. RICHARD A. POSNER, *Chief Judge*

Hon. JOHN L. COFFEY, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

No. 98-4158

MAPLE LANES, INC., d/b/a FRANKIE'S
and KENNETH J. GEORGE, SR.,

Plaintiffs-Appellants,

v.

MEL MESSER, individually and in his official capacity as SHERIFF OF OGLE COUNTY and OGLE COUNTY SHERIFF'S DEPARTMENT,

Defendants-Appellees.

Appendix D

Appeal from the United States District Court for the Northern District of Illinois, Western Division.

No. 98-C-50138

Philip G. Reinhard, Judge.

ORDER

On consideration of the petition for rehearing with suggestion for rehearing *en banc* filed in the above-entitled cause, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing with suggestion for rehearing *en banc* is DENIED.